

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Amendment of Part 2 of the Commission's |) | ET Docket No. 00-258 |
| Rules to Allocate Spectrum Below 3 GHz |) | |
| for Mobile and Fixed Services to Support |) | |
| the Introduction of New Advanced Wireless |) | |
| Services, including Third Generation |) | |
| Wireless Systems |) | |

COMMENTS OF VERIZON WIRELESS

Verizon Wireless respectfully submits these comments in response to the Commission's Fifth Notice of Proposed Rulemaking to make spectrum available for the development of advanced wireless services ("AWS").¹ The Commission's objectives in this proceeding should be the same as for any involving the clearance of spectrum for new services – (1) to provide an efficient and effective process for clearing spectrum of incumbent systems and making it available as quickly as possible for new services, and (2) to ensure that incumbent licensees are provided with comparable facilities with minimal disruption to their current operations.

¹*In the Matter of Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00-258)* ("AWS Proceeding"), Fifth Notice of Proposed Rulemaking ("Notice"), FCC 05-172 (rel. Sep. 29, 2005).

In allocating spectrum for commercial mobile radio services (“CMRS”) in the past, the Commission has generally been effective in meeting these objectives and in balancing the needs of both incumbent licensees and new entrants.² Adherence to the same policies here, with a few exceptions as described herein, should accomplish the same result. Importantly, while the rights of incumbent licensees should be of significant importance to the Commission, the Commission’s rules should not be an avenue for incumbent licensees to use the band clearing process to gain a windfall profit or to fund their entry into new business ventures.

As the Commission is fully aware, the availability of radio frequency spectrum and the flexible use of that spectrum without encumbrances (including the threat of harmful interference) are critical to the operations of any commercial mobile business. CMRS operators have spent billions of dollars on spectrum licenses and many billions more on the construction of advanced wireless networks that support an ever-expanding set of services for the benefit of consumers. To make such investments, operators must have certainty that the spectrum for which they are buying licenses will be

² See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1991); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994) (collectively, “*Emerging Technologies* proceeding”).

fully available for their use and will not be limited by the operations of incumbent licensees or burdened by an unknown future contingent liability.³

To the extent that harmful interference would exist between the incumbent system and the new one, the new entrant should bear all reasonable costs associated with relocating the incumbent to other facilities. However, those costs (or at least the process for determining those costs) must be clearly understood prior to the auction. Uncertainty regarding the cost of clearing the spectrum will have a chilling effect on the auction and will likely impede the development of new services in the band. The Commission recognized this impact when it established procedures for clearing the 1.9 GHz band for Personal Communications Service (“PCS”) via a microwave clearing house.

As the Commission has noted, the AWS spectrum which is the subject of this proceeding (1710-1755 and 2110-2155 MHz) is likely to be used for a variety of new and innovative fixed and mobile wireless applications,⁴ and can be expected to be deployed across wide geographic areas. Consequently, the operations of new AWS systems in the 2110-2155 MHz (“2.1 GHz”) band is likely to cause harmful interference to (and receive harmful interference

³ Congress understood the importance of certainty in the relocation process when it established new laws for clearing AWS spectrum (i.e., 1710-1755 MHz) currently used by the Federal government . *See* Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004) (codified in scattered sections of Title 47 of the United States Code) (“CSEA”).

⁴ *Notice* at Footnote 1.

from) many incumbent systems including those operated by Broadband Radio Service (“BRS”) licensees. To avoid this interference, existing BRS systems will need to be relocated to comparable facilities. The Commission has already identified the 2496-2690 MHz (“2.5 GHz”) band as the new spectrum home for BRS.

We agree with the Commission that new AWS licensees should be afforded the flexibility to determine their own schedule for relocating incumbent BRS systems so long as the relocation occurs prior to the deployment of any AWS service that would cause harmful interference.⁵ Given the substantial cost associated with constructing new wireless networks, new licensees will necessarily deploy service based on their individual business objectives and the needs of the marketplace. They should not be required to relocate incumbent systems, and incur the costs associated with such relocations, earlier than necessary because that would result in significant costs and could impede the introduction of advanced wireless services.

Prior to operations, the AWS licensee should be required to relocate, on a system-by-system basis, any existing BRS system that would suffer harmful interference.⁶ These systems should be relocated to comparable

⁵ *Notice* at ¶ 14.

⁶ In the context of a point-to-multipoint service, we would consider an individual “system” to be the radio base station, all end user units served by that base station,

facilities in the 2.5 GHz band, in accordance with the band plan already established by the Commission. We agree with the Commission’s definition of “comparable facilities” as any replacement facilities that allow the incumbent to maintain the same service it currently provides – in terms of throughput, reliability, and operating costs.⁷ As the Commission notes, this could result in the use of less spectrum if the replacement facilities employ upgraded digital technology and/or new modulation and coding techniques.⁸ Comparable facilities should not include modifications to the incumbent systems that would enable the incumbent licensee to provide an entirely or materially different service. The goal of this proceeding should be to provide incumbent licensees with replacement facilities for their existing systems and services. It should not be to subsidize the incumbent’s entry into a new business.

We agree with the Commission that any BRS station with primary status that is providing service at the time that relocation is requested should be entitled to comparable facilities in the 2.5 GHz band.⁹ Since stations with secondary status are not afforded interference protection, they should not be entitled to relocations that are designed to avoid interference.

and the wireless facilities that connect each end user unit to the base station. It would not include multiple base stations that comprise an entire network.

⁷ *Notice* at ¶ 16.

⁸ *Ibid.*

⁹ *Notice* at ¶ 17.

Only those systems that are operating and providing service to the public should be entitled to compensation for relocation expenses. Where service has been terminated in the 2.1 GHz band, incumbent licensees should not be compensated for constructing new systems in the 2.5 GHz band.¹⁰ While we acknowledge that BRS licensees will have the right to offer a variety of services in the 2.5 GHz band, the AWS licensee should not be obligated to provide comparable facilities for anything other than the service currently provided.

We agree with the Commission that any major modifications¹¹ to existing BRS facilities and any new construction of BRS facilities in the 2.1 GHz band should not be eligible for relocation and should be afforded secondary status.¹² However, we do not believe that alone is sufficient to ensure timely and effective deployment of AWS in the band. For example, construction of new BRS facilities in the band would likely cause harmful interference to AWS systems and would impede deployment of service to the public. While the secondary status of such facilities would require that they operate on a non-interference basis, the requirement to monitor such activity would be a burden to licensees and the FCC. Consequently, we urge the

¹⁰ Verizon Wireless supports the Commission's proposal to provide BRS licensees with spectrum in the 2.5 GHz band as compensation for spectrum lost at 2.1 GHz. However, new AWS licensees should only be obligated to pay for relocation if a system is currently operating and providing service to the public.

¹¹ Verizon Wireless supports the Commission's tentative conclusion about what constitutes a "major modification." *Notice* at ¶ 23.

Commission to institute a freeze on the construction of new facilities and any other major modifications to BRS systems.

Finally, Verizon Wireless strongly opposes the adoption of a “right of return” policy for use in clearing BRS systems out of the 2.1 GHz band. As described in the *Notice*, this policy would presumably allow incumbent licensees to return to their old frequency assignments if after a twelve month period they find their replacement facilities to be unacceptable. Adoption of such a policy would result in substantial uncertainty to prospective bidders in the AWS auction and would significantly impede the deployment of AWS.

First, there is no such “right of return” in existing Commission rules. The *Notice* cites Section 101.75(d) as creating a “right of return” for fixed microwave licensees that are displaced by *Emerging Technology* (“*ET*”) licensees, including PCS licensees in the 1.9 GHz band.¹³ However, the “right” of fixed licensees to “return” to their previously assigned spectrum is not guaranteed by §101.75(d). That rule describes various remedies that are available to the *ET* licensee, not the incumbent occupant of the spectrum, in the event that replacement facilities are not found to be comparable. Those remedies include “another comparable frequency band, a land-line system, or any other facility that satisfies the requirements” for comparable facilities.¹⁴

¹² *Notice* at ¶ 22.

¹³ *Notice* at ¶ 25.

¹⁴ 47 CFR § 101.75(d).

The *ET* licensee has broad discretion as to the specific remedy to employ, so long as “comparable facilities” are provided to the incumbent.

Second, the circumstances present in this case are very different than those that existed in the 1.9 GHz band. Here, the Commission has already made an affirmative decision that the 2.5 GHz band is suitable replacement spectrum, and has proposed to provide BRS licensees with this spectrum independent of whether there are any existing facilities to relocate.¹⁵ Moreover, the Commission’s decision to make available this spectrum was bolstered by the BRS licensees’ own recommendation to reconfigure the 2.5 GHz band to better meet their needs. A “right of return” policy is thus not appropriate for this very different band clearing situation.

Third, granting a “right of return” to incumbent occupants of the band would be ill-advised because it would provide the incumbent licensees with leverage to extract higher payments from AWS licensees and inject uncertainty into the clearing process. Putting aside the dampening effect on the AWS auction that could result if bidders knew that they may be forced to return the spectrum to incumbents, a high bidder would face the uncertainty of not knowing whether an incumbent licensee would return. Not knowing that the band can in fact be cleared – and that the relocated incumbent could seek alternative relocation or even to return to the AWS spectrum – would be

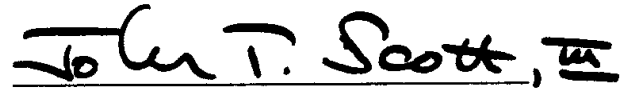
¹⁵ *Notice* at ¶ 19.

a major disincentive to investment in AWS. Consequently, we urge that Section 101.75(d) not be applied to the 2.1 GHz AWS band.

Verizon Wireless urges the Commission to establish efficient and effective rules for clearing the 2.1 GHz band for advanced wireless services consistent with the recommendations described herein. Doing so will ensure that incumbent licensees are adequately accommodated, while spectrum is cleared to support the development of new wireless services.

Respectfully submitted,

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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Certificate of Service

I hereby certify that on this 23rd day of November copies of the foregoing “Comments of Verizon Wireless” in WT Docket 00-258 were sent by hand delivery, or e-mail, to:

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Sarah E. Weisman